

02 27.01.2022

SA 178 of 2019

Ct-08

**Binod Paramanno
Vs.
Nirmal Mondal & Ors.**

(Via Video Conference)

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Mr. Saunak Bhattacharya
Mr. Sounak Mondal
... For the Appellant

Mr. Partha Pratim Roy
Mr. S. Sanyal
... For the Respondents

In order to dispose of the second appeal at the admission stage, we have directed the appellant to serve notice upon the respondents.

Pursuant to the notice, the respondents are represented, although we are of the view that at the admission of the second appeal the respondents need not be heard, but we have better understanding the dispute between the parties and for disposal of the second appeal we deem it necessary that the parties should be heard at the admission stage.

By consent of the parties the appeal is taken up for consideration.

The plaintiff filed the suit for permanent injunction on the basis that the father of the plaintiff was the absolute owner and possessor of the land measuring about 8 acres 81 decimal under Mouza- Satjala, P.S- Gosava, District 24 Parganas (South) in plot nos. 1183,746,745,744, Khatian No. 155, J.L No. 97.

After the demise of plaintiff's father, the plaintiff and the proforma defendants became the joint owners and possessors of the suit property. The plaintiff contends that the defendants have no right, title and interest and

possession over the suit property. The defendants were always trying to dispossess the plaintiff from the suit property by force. The plaintiff opposed the said illegal activities of the defendants but the defendants are influential person in the locality and there is every chance the plaintiff may be dispossessed from the suit property.

The suit was contested by the defendants by filing written statement. In the written statement, the defendants denied and disputed all the allegations made in the plaint that the suit land was belonged to Sindhubala Dashi and Aribindo Mondal, each of them has 8 *annas* share therein. Said Aribindo sold his 8 *annas* share to Anu Prasad Mondal, defendant no. 5 and remaining 8 *annas* share to Ashit Baran Mondal, defendant no. 6. Thereafter, the defendant no. 5 sold 1.6 acres of land out of his share (2.20 acres) to Basanta Pramanno, the father of the plaintiff. The said Basanta Pramanno sold 2 bighas of land out of said 5 bighas of land to one Mother Mondal and remaining 3 bighas of land to one Naba Kumar Mondal. The said Mother Mondal sold the said 2 bighas of land in equal share to Nirmal Mondal, s/o late Panchanan Mondal, the defendant no. 1 and Achinta Mondal, defendant no. 2. The said Naba Kumar Mondal sold his purchased land measuring more or less 3 bighas to Smt. Bhejali Bala Pramanno, wife of Basanta Pramanno and the mother of the plaintiff. The said Bhejali Bala sold her aforesaid purchased land to Meghnath Mondal and Gouri Bala Mondal. Meghnath Mondal sold his purchased land to Shoukat Mondal and Gouri Bala Mondal sold her share to Apurba Mondal, the defendant no. 3.

Sindhubala Dashi sold her 8 annas share in the suit property to Panchanan Mondal and Rabindranath Mondal in equal share by virtue of a sale deed and Panchanan Mondal sold 3 bighas of land out of his purchased land to one Rabindranath Bain and others by virtue of a separate sale deed. On 26th June, 1994 Panchanan Mondal died intestate leaving behind his three sons and four daughters. The defendant nos. 1 to 3 are sons of said Panchanan Mondal. After demise of said Panchanan Mondal, the defendant nos. 1 to 3 and their four sisters jointly inherited the portion of the suit land left by their father. The names of the defendants have been recorded in L.R.R.O.R in respect of their shares in the suit land. On the basis of that it is claimed by the defendants that the plaintiff has no right, title and interest in the suit land. It is further claimed that the suit land is joint and undivided property of the defendants and some other co-sharers, who have not been impleaded as party in the suit property.

The trial court on the basis of oral and the documentary evidence and on consideration of the certified copy of RSROR being no. 155, marked as exhibit-1 and tax receipts, marked as exhibit-2, arrived at a conclusion that the plaintiff is in possession of the suit property as permissive occupier (Anumati Dakhaldar).

It further transpires that the plaintiff paid tax in respect of his possession. However, the suit was dismissed, as the plaintiff could not establish his ownership in respect of the suit property.

It is further contended that the exhibit nos. 1 & 2 relate to possession and not the ownership of the suit property. On the other hand, the

defendants have proved by producing several documents in their favour, the suit was dismissed.

Before the first appellate court, it was contended that the plaintiff had title over the suit property and the defendants without having any title disturbed his possession.

The trial court on consideration of the evidence on record has made the following observations:-

“Sindhubala Dashi sold her 8 annas share in the suit property to Panchanan Mondal and Rabindranath Mondal in equal share by virtue of a sale deed and Panchanan Mondal sold 3 bighas of land out of his purchased land to one Rabindranath Bain and others by virtue of a separate sale deed. On 26/6/1994 Panchanan Mondal died intestate leaving behind his three sons and four daughters. The defendant nos. 1 to 3 are sons of said Panchanan Mondal. After demise of said Panchanan Mondal, the defendant nos. 1 to 3 and their four sisters jointly inherited the portion of the suit land left by their father. The names of the defendants have been recorded in L.R.R.O.R in respect of their shares in the suit land. Therefore, the plaintiff has no right, title and interest in the suit land. The suit land is joint and undivided property of the defendants and some other co-sharers, who have not been impleaded as party in the suit property.

On the basis of the pleadings and rival contention of the parties issues are framed which are as follows:

- 1) Is the suit maintainable in it's present form and prayer?*

- 2) *Has the plaintiff any cause of action to file his suit?*
- 3) *Is the plaintiff entitled to get the decree as prayed for?*
- 4) *To that other relief/reliefs, if any, plaintiff is entitled to?*

To substantiate the case of the plaintiff, Sri Binod Pramanno is examined as PW-1 and documents proved by or on behalf of the plaintiff are marked as follows:-

- 1) *Certified copy RS ROR being no. 155 is marked as exbt. 1 and*
- 2) *Tax receipts thirteen in number are marked as exbt. 2 series.”*

Although, the trial court may have gone wrong in arriving at the conclusion that in a suit for permanent injunction a better title needs to be proved, but on perusal of the order of the first appellate court it is clear that the first appellate court had corrected the said error to arrive at similar findings.

The first appellate court had rightly observed that the possession of the appellant may be only permissive in respect of a part of the suit property and the plaintiff having failed to establish that he is in permissive possession of entirety of the property, decree cannot be passed on the basis of such vague allegation. The first appellate court had taken note of the RSROR which only shows that the plaintiff could be in possession of certain part of the property.

The allegations made in the plaint are vague inasmuch as on the basis of the documents disclosed by the defendants, it cannot be said that the appellant is in possession of the entirety of the property, as mentioned in the schedule to

the suit. It is the obligation of the plaintiff to clearly define the nature of his possession of the suit property, which the plaintiff had failed to establish. Moreover, the tax receipt showing possession does not mention any plot number.

On such consideration, we do not find any merit in the second appeal.

The appeal is accordingly dismissed.

The appeal and the connected application are accordingly disposed of without any order as to costs.

(Ajoy Kumar Mukherjee,J.)

(Soumen Sen, J.)

